

**ATTORNEY DOCKET NO. 64162-022
PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:)
Gerald W. BOTH, et al.) Group Art Unit: 1632
Serial No.: 09/464,767) Examiner: SCOTT D. PRIEBE
Filed: December 16, 1999)
For: DNA ENCODING OVINE ADENOVIRUS)
(OAV287) AND ITS USE AS A VIRAL VECTOR)

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**

Hon. Assistant Commissioner for Patents
Washington, D. C. 20231

Sir:

The owner, Commonwealth Scientific and Industrial Research Organization, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior U.S. Patent No. 6,020,172. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term

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as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

The undersigned is an attorney of record and therefore the certification under 37 CFR 3.73(b) is not required.

Please charge the Terminal Disclaimer fee (37 CFR 1.20(d) of \$110.00 to Deposit Account

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No. 50-0417. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account 50-0471.

Respectfully submitted,

McDERMOTT, WILL & EMERY

Dated: March 17, 2003

By:



Judith L. Toffenetti

Registration No. 39,048

600 13th Street, N.W., Suite 1200
Washington, D.C. 20005-3096
Telephone: (202) 756-8000
Facsimile: (202) 756-8087

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